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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,729

07/27/2006

Jon Grant

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Law Office of Michael D. Eisenberg
Intellectual Property Law
6023 Vista De La Mesa
La Jolla, CA 92037

EXAMINER

SKURDAL, COREY NELSON

ART UNIT

PAPER NUMBER

3782

NOTIFICATION DATE

DELIVERY MODE

03/20/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

meisenberg@mdepatents.com

Office Action Summary	Application No. 10/565,729	Applicant(s) GRANT, JON	
	Examiner COREY N. SKURDAL	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/3/2009 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al. (US 2002/0179647).

Hall discloses a portable flexible carrier 110 comprising: an inner flexible fluid container 520; an outer separable cover 510 forming a selectively sealable pouch to receive the inner flexible fluid container, the outer cover being produced from a chemically hardened fluorinated polymer material (paragraph 30) that is impermeable to chemical toxins and biological agents; a sleeve 120/121/124 provided at an open end of the sealable pouch 510 and projecting forwardly therefrom (Figure 1 and 2); a drinking tube 130 connected to an opening of the container, and wherein the tube is formed from an inner and outer layer, such that a conduit layer is defined along the entire length of

the tube, the conduit layer also being made from a fluorinated polymer (paragraph 31, lines 11-13); an on/off valve 150 on the tube for controlling the fluid flow; and a means 122 for selectively sealing the cover interior and its contents from the atmosphere.

Hall does not disclose the conduit and the outer separable cover being made from the same chemically hardened material which is impermeable to radioactive particles. However, the material 3TOX is a chemically hardened material that is well known in the art to be used in protecting against toxins, biological agents, and radioactive particles. As Hall teaches the general concept of a drinking container with an outer cover and a conduit which are made from a material that is impermeable to chemical toxins and biological agents, it would have been an obvious matter of design choice to have made the outer cover 520 and the outer conduit layer of the drinking tube 130 from the material 3TOX. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 2, the material 3TOX is a chemically hardened material similar to that disclosed by Hall which is composed of a multi-layer material having a fabric support (paragraph 30, line 11) that is covered by a protective complex (paragraph 30, lines 13-15).

3. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al. in view of Fawcett (US 5,803,333). Hall et al. discloses the claimed invention but does not have shoulder straps or a sealable flap. However, Fawcett teaches a pouch 10 for carrying a bladder 48 similar to that of Hall et al., and wherein the pouch includes

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shoulder straps 46, and a selectively sealable flap 20 to overlie an end of the pouch. It would have been obvious to one skilled in the art at the time of invention to carry the bladder of Hall et al. in the Fawcett device in order to provide easy transportation.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fawcett (US 5,803,333) in view of Fawcett (US 5,085,349) and Hall et al. (US 2002/0179647).

Fawcett '333 discloses a portable flexible carrier 10 substantially as claimed including: a fluid container 48 made of flexible material; a cover 14/16 defining a pouch 12 to receive the fluid container, the pouch 12 having an open end (Figure 5) which defines a sleeve projecting forwardly (as no specific direction has been established that defines a forward direction in relation to any other structure, Examiner is considering the area above the bag as in Figure 1 to be the forward direction); a flap 20 disposed at the cover to substantially encase the top portion of the pouch, a second seal 42/44 being disposed on the flap to detachably couple the flap to the front of the cover; a tube 50 with a first and a second end extending from the cover, the first end received by the fluid container, and the tube being made from a flexible material; a valve 52 disposed at the second end of the tube; and shoulder straps 46 disposed at the cover. Fawcett '333 does not have the cover made from a chemically hardened material, a first seal at the sleeve of the pouch, and a tube conduit made from the same chemically hardened material.

However, Fawcett '349 teaches a similar cover 16 defining a pouch for carrying a fluid container 30, wherein the upper open end of the pouch defines a sleeve having a first seal 25 for selectively sealing the pouch. As such, it would have been obvious to

one of ordinary skill in the art at the time of invention to provide the pouch of Fawcett '333 with a first sealing means at the top of the pouch as taught by Fawcett '349 in order to better secure the fluid container within the pouch.

Furthermore, Hall teaches a hydration system with a fluid container 110 and a tube 130, wherein the hydration system is made from select outer layers so as to protect the carried fluid from harmful chemical toxins and biological agents. This is accomplished by an outer bladder 510 made from a chemically hardened material as claimed, and by an outer conduit layer along the length of the tube which made from a fluorinated polymer (paragraph 31, lines 11-13). As Hall teaches the general concept of a drinking container with an outer cover and a conduit which are made from a material that is impermeable to chemical toxins and biological agents, it would have been obvious to one skilled in the art to have provided a conduit on the tube of Fawcett '333 and to have made the cover and conduit from any well known material that is impermeable to chemical toxins, and biological agents (i.e. 3TOX), in order to provide a safe means for transporting drinking fluids.

Response to Arguments

5. Applicant's arguments filed 3/3/2009 have been fully considered but they are not persuasive. Applicant has essentially argued that the cited references/combinations fail to disclose the claimed "sleeve" at the open end of the pouch which projects forwardly therefrom. However, the claims fail to recite any specific structure regarding the sleeve that defines over a standard pouch wherein the top open portion of the pouch can be considered to form a sleeve and wherein a forward direction is defined toward the top

open end. As such, the pouch 12 of Fawcett '333 is considered to define a sleeve as claimed at the open end shown in Figure 5. Furthermore, as applied to claim 1, the portion 120/121/124 of Hall clearly projects outwardly/forwardly from the open end of the pouch so as to form a "sleeve" structure at the open end of the pouch.

Conclusion

6. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COREY N. SKURDAL whose telephone number is (571)272-9588. The examiner can normally be reached on M-Th 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. N. S./

Examiner, Art Unit 3782

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782